IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Central Excise Appeal No. 36/2006
The Commissioner Central Excise,Nagpur vs. M/s Keltech Energies Ltd.,Village Garamsur, P.O. Dudhala and another.

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| Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's Orders. |
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**CORAM : A.P. Lavande & R.V.More,JJ**
**DATE : 6.9.2007**

Heard Shri S. Ahirkar, learned counsel for the appellant and Shri M.G.Bhangde, Senior Advocate with Shri R.M.Bhangde learned counsel for respondent no.1.

2. By this appeal under Section 35-G(1) of the Central Excise Act, 1944 (hereinafter referred to as 'The Act') the Revenue challenges common order dated 13.3.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal West Zonal Bench at Mumbai, Court No. 3 ( for short 'The CESTAT') remanding the matters in all three appeals to original authority.

3. During the period 1.4.2001 to 30.6.2002 the respondent no.1 supplied explosives to Coal India Ltd., M/s National Mineral Development

Corporation and M/s Singareni Collieries Company Ltd. at agreed prices and paid central excise duty according to law. By letter dated 1.7.2002 the Coal India Ltd. requested respondent no.1 to supply explosives for further period at the rates fixed for the year 2001-2002 and subject to finalisation of final price. During 1.7.2002 to 31.8.2002 the respondent no.1 supplied explosives to Coal India Ltd. and billed provisionally at the price fixed for the year 2001-02 and paid excise duty accordingly. During 1.7.2002 to 28.2.2003 the respondent no.1 supplied explosives to M/s National Mineral Development Corporation and billed provisionally at the price fixed for the year 2001-02 and paid excise duty. For the same period respondent no.1 supplied explosives to M/s Singareni Collieries Company Ltd. and billed provisionally at the price fixed for the year 2001-02 and paid excise duty accordingly.

4. By letters dated 12.12.2002, 27.1.2003 and 8.3.2003 the aforesaid three purchasers fixed the price of the goods in question at the rates lower than those at which they were cleared and excise duty was paid. Respondent no.1 issued credit notes in favour of the purchasers representing the excess amount of Central Excise Duty paid by it and the

purchasers accordingly deducted the said amount from the bills presented by the respondent no.1 to them for the subsequent period. The respondent no. 1 thereafter filed refund claims of Rs. 9758/-, Rs. 3381/- and Rs. 2154/- before the Assistant commissioner Central Excise Division -II, Nagpur. By three separate orders dated 22.1.2004 the Assistant commissioner rejected the refund claims relying upon the judgment in the case of MRF Ltd. vs. Collector of Central Excise Madras (1997 (92) E.L.T. 309 (S.C.).

5. The appeals preferred by respondent no.1 against the orders passed by the Assistant commissioner were dismissed by orders dated 31.5.2004. The respondent no.1 preferred three appeals before the CESTAT. By common order dated 13.3.2006 the CESTAT disposed of the appeals by passing the following order.

> "1. Heard both sides. They agree that on a similar issue, the Larger Bench of this Tribunal in the case of Special Blasts Ltd. vs. CCE, Raipur (Order no. 503-50-4/05 NR-A dated 30.3.2005 has decided a similar matter in favour of the

appellants in that case. Since the issue is admittedly similar, these appeals are also allowed, after setting aside the impugned order and remand the matter to rehear the appellant and redetermine the issue, in the light of the decision of the Larger Bench of this Tribunal cited supra.

2. The appeals are allowed as remand to the original authority in above terms."

6. Mr. Ahirkar, learned counsel for the Revenue submitted that the CESTAT erred in remanding the matter to the original authority inasmuch as the respondent no.1 is not entitled to refund of the duties in view of the clear ratio laid down in the case of MRF (supra). According to Mr. Ahirkar the subsequent agreement between the respondent no.1 and the purchasers by which price was reduced is totally irrelevant and cannot be a ground for claiming refund. In support of his submissions, Mr. Ahirkar, learned counsel for the appellant placed reliance upon the following decisions:

1. MRF Ltd. vs. Collector of Central Excise, Madras;
(1997 (92) E.L.T. 309 (S.C.);

2. Mauria Udyog Ltd., v. Commissioner of Central Excise;
(2007 (207) E.L.T. 31 (P & H); and

3. Metal Forgings v. Union of India
(2002 (146) E.L.T. 241 (S.C.).

7. Per contra, Mr. Bhangde, learned senior counsel submitted that CESTAT was justified in remanding the matter to the original authority in view of the decision of the Larger Bench in Special Blasts Ltd. vs. Commissioner of Central Excise, Raipur (2005(192) E.L.T. 331. He further invited our attention to the impugned order in which it has been stated that both the parties had agreed that on a similar issue the Larger Bench in the case of Special Blasts Ltd. (supra) had decided similar matter in favour of the assessee.

8. Having considered the submissions made by the learned counsel for the rival parties and

having perused the authorities cited by both sides, we are of the considered opinion that the CESTAT was justified in remanding the matter back to the original authority in view of the decision of the Larger Bench of the Tribunal in the case of Special Blasts Ltd.. Since the issue involved in all the appeals was covered by the decision of the Larger Bench, the CESTAT was justified in remanding the matters back to the original authority. It is also pertinent to note that by orders dated 31.8.2007 passed by this Bench in disposing of the several appeals filed by the revenue under Section 35(G) (1) of the Act we have already upheld the decisions in favour of the very same assessee and in all those cases the facts were almost identical. In view of the above, we find no illegality or perversity in the impugned order passed by the CESTAT. In our opinion, the CESTAT was justified in remanding the matters back to the original authority. In any case, no substantial question of law is involved in the present appeal. The appeal is, therefore, dismissed.

**Judge** **Judge**

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